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In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-920

CARL WHITE,
Petitioner,

vs.

CLOVIS CARL GREEN, JR.,
Respondent.

PETITIONER'S SUPPLEMENTAL BRIEF

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PETITIONER'S SUPPLEMENTAL BRIEF

Carl White, Superintendent of the Missouri Training Center for Men, Moberly, Missouri, petitioner herein, by and through Attorney General John Ashcroft, State of Missouri, offers this "Supplemental Petition," in accordance with this Court's Rule 24.5, in order to make available to this Court a recent "Order" and "Memorandum" issued by the Honorable H. Kenneth Wangelin, United States District Judge, Eastern District of Missouri:

On December 12, 1979, a "Petition for Writ of Certiorari" was filed on Carl White's behalf. Therein, it was requested that this Court review a Judgment and Opinion issued by the Eighth Circuit on July 13, 1979. Although the Eighth Circuit concluded that some of Mr. Green's contentions were frivolous, and properly dismissed by the Eastern District, it ordered that an evidentiary hearing be held in

regard to ". . . whether [Mr. White's alleged denial of] Mr. Green's right to wear long hair and beards [sic] as an incident of the exercise of his religion, . . . and [Mr. White's] alleged denial of [Mr. Green's] right to distribute the religious literature of his church amounted to a denial of Mr. Green's federal constitutional rights." In so concluding the Eighth Circuit found that Mr. Green initiated the instant lawsuit on his own behalf; that it was not a class action; that the action was not barred by *res judicata*; and, inferentially, that neither party had a right to a jury trial.

In his "Petition" Mr. White discussed, at some length, Mr. Green's gross abuse of this country's judicial system—both federal and state. As noted by Judge Hunter in *Green v. Camper,* No. 79-4055-CV-C (U.S.D.C. W.D. Mo., August 18, 1979)—Appendix D—Mr. Green has filed over 500 separate lawsuits during the years 1972 through July 1, 1979, inclusive. Based upon this fact, in addition to the conclusion reached by a number of federal and state judges that Mr. Green's myriad lawsuits were maliciously motivated, Mr. White requested that a writ of certiorari be issued, the Eighth Circuit Opinion reversed, and Mr. Green denied the right to once again haul Mr. White into court not only upon meritless grounds but upon grounds previously ajudicated adversely to Mr. Green. As stated by Mr. White in his "Petition," at page 29:

> "It is time that Mr. White's own rights be vindicated and that he be spared once again being brought into court by Mr. Green . . . ."

On December 6, 1979, the Honorable H. Kenneth Wangelin, United States District Judge, issued an "Order" barring Mr. Green from filing lawsuits in forma pauperis and further, that he be enjoined as follows:

> "In any pleading, writ, petition, complaint, or motion filed or attempted to be filed in a United States District Court subsequent to the service of the Order, you are hereby ordered to verify all pleadings, writs, petitions, complaints or motions; to include in same a list of all pleadings, writs, petitions, complaints or motions ever filed on the same, similar or related cause of action; to include in same a statement referring to this Court's opinion, and to send a copy of same to the law clerk for the Chief Judge of the United States District Court for the Eastern District of Missouri."

This "Order" was accompanied by a "Memorandum" explaining that the actions taken were not only constitutionally permissible but mandated because of "Inmate Green's avowed purpose to frustrate the judicial process. . ." which "is so flagrant that it regularly preempts scare and valuable judicial resources to the point that other litigants who may have meritorious matters suffer often protracted delay on account of Inmate Green's misdeeds." A true and correct copy of the "Order" and "Memorandum" accompany each "Supplemental Petition." *In the Matter of the Suspected Contumacious Conduct of Clovis Carl Green, Jr.,* 79 Misc. 64 (U.S.D.C. E.D. Mo., December 6, 1979). The "Order" and "Memorandum" establish that the instant lawsuit is maliciously brought and that it is part of Mr. Green's coordinated and conscientious effort to harass prison officials into granting him de facto relief. However, before Mr. White discusses the relevance of Judge Wangelin's "Order" and "Memorandum" a short explanation follows detailing the reasons why the December 6, 1979, Opinion was not included in the original "Petition":

Mr. White's "Petition" was prepared in the first weeks of November 1979. It was mailed to the printer on November 21, 1979; a printed copy of the "Petition" was filed in this Court on December 12, 1979. The undersigned received his own copy of the printed "Petition" on December 13,

1979. Judge Wangelin issued his "Order" and "Memorandum," in No. 79 Misc. 64, on December 6, 1979, but it was not until December 17, 1979, that the Missouri Attorney General's Office received a copy of these documents. Axiomatically, Judge Wangelin's "Order" and "Memorandum" were issued several weeks after Mr. White's "Petition" was mailed to the printer; it was not received by this Office until five days after the "Petition" was filed in this Court. Consequently, Mr. White is filing this "Supplemental Petition" in order to bring to this Court's attention a case which bears directly upon issues involved herein. Specifically, Judge Wangelin's "Order" and "Memorandum" establish not only the maliciousness of Mr. Green's innumerable filings but the injunction supports Mr. White's claim that Mr. Green consciously attempts to avoid the doctrine of res judicata by refiling claims upon which adverse decisions were rendered in the hope and belief that the duplication will be lost somewhere in the five hundred lawsuits. Consequently, Mr. White believes that this Court's Rule 24.5 specifically grants him the opportunity to file this "Supplemental Petition" while both parties' petitions for writs of certiorari are pending; the "Supplemental Petition" is necessary because the attached "Order" and "Memorandum" were not available at the time the printed "Petition" was filed.

As noted, Judge Wangelin barred Mr. Green from filing in either the Eastern or Western Districts of Missouri "any pleading, writ, petition, complaint or motion . . . without prepayment of the requisite filing fee. . . ." Judge Wangelin also enjoined Mr. Green from filing any such documents in any federal court without first including a list of all pleadings, writs, petitions, complaints or motions ever filed on the same, similar or related cause of action. Judge Wangelin further required that Mr. Green include

in any suit filed in any federal court a statement referring to his Opinion. Judge Wangelin's accompanying "Memorandum" explained the necessity for these "Orders":

> "This matter is before the Court upon the attempted filing of four purported civil rights complaints in forma pauperis by Inmate Green, and upon submission of the Order to Show Cause entered herein directing Inmate Green to show cause why he should not be held in contempt of court, and why he should not be permanently denied the ability to proceed in forma pauperis.
>
> * * *
>
> "The third complaint is entitled *Rev. Clovis Carl Green, Jr., on behalf of himself and all other prisoners similarly situated,* Plaintiffs v. *David Dennis, Mr. Pitzen, Ms. Hufty, Ms. Lee, Major Morgan, Dr. W. H. McCormick, and Carl White, Superintendent, Missouri Training Center for Men,* Defendants. This volunimous [sic] and rambling complaint practically defies analyzation. *However, Inmate Green's claims are apparently in the nature of a denial of his freedom of religious activity; cruel and inhumane living conditions violative of the Eighth Amendment; and the denial of access to the Courts.*
>
> * * *
>
> "With respect to at least the first three complaints, the Court notes that venue is improper in this District under 28 U.S.C. § 1391(b) or (e). However, it is apparent in light of the decisions in *Clovis Carl Green, Jr. v. Donald Camper, et al.,* No. 79-4055-CV-C (W.D. Mo. filed August 16, 1979) why Inmate Green has chosen to renew his litigatory onslaught in this District. Recognizing Inmate Green's unending propensity to file wholly meritless, frivolous and malicious

actions in the Western District, in what the Court termed a 'flagrant abuse of the judicial process' the United States District Court for the Western District of Missouri has taken steps to curtail Inmate Green's avowed purpose to 'preempt so much judicial time at the trial and appellate levels as to thwart the very ability of the judicial system to carry out its necessary judicial functions of properly processing its criminal and civil docket of cases filed by other litigants who may have meritorious matters,' *See Green v. Camper, supra,* slip op. at 3 and 31-38. The Western District has, therefore, ordered that all suits filed by Inmate Green be immediately referred to the United States Magistrate for an initial detemination of maliciousness or frivolousness. In this Court's Opinion, even such minimal consideration places too much faith in Inmate Green's intentions in light of his past actions. Such restrictions will not prevent Inmate Green from carrying forward his intentional abuse of judicial resources. The over 500 frivolous and/or malicious cases filed by Inmate Green are set forth at *Green v. Camper, supra* at 4-29. That number is continuously swelling. Inmate Green has been previously enjoined from acting as 'writ-writer' or 'jailhouse lawyer' for any other inmate incarcerated within the Missouri penal system, or from filing in the United States District Court for the Western District of Missouri any action against the State of Missouri or any of its officials or employees, including the state judiciary, for any alleged cause of action arising out of other inmate's criminal convictions or their resultant confinement. *Green v. Wyrick,* 428 F.Supp. 732, 743-744 (W.D. Mo. 1976). Inmate Green has also been enjoined from filing any further lawsuits concerning the administration and operation of the United States District Court for the Western

District of Missouri, *Green v. United States of America,* No. 76-CV-100-C (W.D. Mo. filed August 23, 1976). Neither injunction has deterred Inmate Green, and his deliberate violations of those injunctions have twice resulted in criminal convictions for contempt of court [citations omitted]. The first two complaints mentioned herein in all likelihood violate the second injunction referred to above, and the third complaint set forth above in all likelihood violates the first injunction mentioned above.

"Inmate Green has also organized a prisoner's law collective whose purpose it is to flood the courts with frivolous suits, and has resorted to threats of violence if his demands are not met. [Citation omitted.] Inmate Green has been found to have practiced fraud upon the court through the filing of false financial affidavits in connection with requests to proceed in forma pauperis. [Citation omitted.]

"However, rather than engage in what would appear to be a meaningless act with respect to Inmate Green's avowed purpose to frustrate the judicial process, given the fact that he has been undeterred by his five month and ten year sentences for criminal contempt of court, this Court has decided to take a different course of action.

"As has been stated by almost every court which has dealt with Inmate Green in the past several years, his abuse of the judicial process is so flagrant that it regularly preempts scarce and valuable judicial resources to the point that other litigants who may have meritorious matters suffer often protracted delay on account of Inmate Green's misdeeds.

"In addition to the previously cited Opinions of the Western District of Missouri, the state courts have

characterized Inmate Green's filings as 'a calculated abuse of process'. [Citation omitted.]

"The United States Court of Appeals has similarly characterized Inmate Green's filings. [Citation omitted.] In that opinion, the Eighth Circuit ordered that in light of Inmate Green's continued abuse, Inmate Green would no longer be allowed to file writs of mandamus with the Eighth Circuit Court of Appeals, which challenged the regularity of proceedings in district court.

* * *

"One method by which society, through the mechanisms of both legislative and judicial systems, imposes obligations on its individual members, is by setting and demanding adherence to prohibitory standards. Prosecution for criminal conduct and punishment therefore is one of the methods used to manifest, encourage and enforce an individual's obligation to society. *This method has not been effective in impressing upon Inmate Green the concept that the rights of the individual are, in certain contexts, affected by the transcendant needs of the whole.*

"The amount of human and financial resources expended by the state and federal courts who have come within Inmate Green's orbit is a proud but sorrowful display. It is proud in that it manifests extraordinary concern that even the boy who cried wolf hundreds of times too often has nonetheless had his cries underwritten by the United States Government. However, it is sorrowful that others must countenance arrogant maliciousness directed toward impeding an important social institution. *That Inmate Green claims to be the founder of the 'human awareness church' is pitifully*

ironic in light of his callous disregard for the rights of others' access to the Courts.

* * *

"Undeterred by the expense non-pauper parties would have to bear in filing meritless claims, *unafraid of perjuring himself to keep an obviously meritless claim alive, content to violate court orders with impunity despite two convictions for criminal contempt of court, Clovis Carl Green, Jr. has, with the aid of 28 U.S.C. § 1915, continuously engaged in the grossest intentional abuse of the judicial process.*

"To prevent Inmate Green from filing or proceeding in forma pauperis in this or any future case in the Eastern or Western Districts of Missouri may insure that Inmate Green files only those suits which he truly believes are justified. Such action will also force Inmate Green to make the initial judgment required of any potential litigant—is a possible benefit from the subject lawsuit worth the necessary expense? If Inmate Green continues to file frivolous and malicious lawsuits in furtherance of his 'plan' or as a hobby, or to relieve the boredom of prison life, it will now at least become an expensive 'plan' or hobby.

". . . Inmate Green's abuse has been so consistent, flagrant and malicious that it appears to the Court the only viable alternative is to remove Inmate Green's major weapon. To that end, this Court will enter an order pursuant to 28 U.S.C. § 1651(a) directing the clerks of the United States District Courts for the Eastern and Western Districts of Missouri not to accept for filing any writ, petition, complaint or motion for Inmate Green without prepayment of the requisite

filing fee, and to return to Inmate Green any writ, petition, complaint or motion seeking leave to file and/or proceed in forma pauperis under 28 U.S.C. § 1915, with a notation 'applicable filing fee must be paid', and to send to Inmate Green the current schedule of filing fees in the Court; and will further order Inmate Green to verify all pleadings, writs, petitions, complaints or motions ever submitted for filing to a United States District Court; to include in every writ, petition, complaint or motion filed, a list of all causes previously filed on the same, similar or related cause of action; to include in every writ, petition, complaint or motion a stateement referring to this Court's opinion; and to send a copy of every writ, petition, complaint or motion filed in any federal court to the law clerk for the Chief Judge of the United States District Court for the Eastern District of Missouri [Citation omitted.]" [Emphasis added.]

The extreme action taken in the above-quoted case was in response to Mr. Green's conscious and concerted attack not only upon both the state and federal judiciary but upon prison officials in general and Mr. White in particular. The above quote establishes that once again Mr. Green has attempted to litigate the issue of religion vis-a-vis Mr. White and the Missouri Training Center for Men at Moberly, Missouri. It is not enough that Mr. Green has already sued Mr. White three times in regard to so-called religious activities at Moberly; even while the instant case is pending Mr. Green has initiated another lawsuit concerning alleged religious prosecution at Moberly by Mr. White.

The quoted case demonstrates the maliciousness of this case and Mr. Green's intent to harass Mr. White into granting privileges that are not constitutionally mandated.

Why should Mr. Green be placed in a special category simply because he has filed innumerable harassive lawsuits? Why should Mr. Green be allowed to proceed with duplicative actions simply because state and federal attorneys, as well as state and federal judges, are unable to locate all of Mr. Green's previous lawsuits and sort through them in an effort to ascertain if the one presently before them is barred by the doctrine of res judicata? It is time that Mr. White be heard. It is time that Mr. White no longer be brought into court by Mr. Green on issues already decided adversely to the latter.

In accordance with the demonstrated abuse of Mr. Green it is respectfully requested that this Court issue the Writ and reverse the Eighth Circuit's Opinion. If this Court allows the Eighth Circuit's Opinion to stand Mr. Green will be encouraged to continue and redouble his efforts at abuse. If this case proceeds to trial it will mean that where Mr. Green is concerned the doctrine of res judicata does not exist.

It is in light of the foregoing that Mr. White requests that the laws of this country be utilized not only to support every frivolous claim of a state inmate but also to support the right of Mr. White not to be required to litigate the same cause of action repeatedly.

EN FIN, in light of all the foregoing Mr. White respectfully requests that this Court issue the Writ and, on a basis of several lower court decisions, conclude that Mr. Green's gross abuse of the judicial system and demonstrated harassment of Mr. White not be underwritten by the United States Government and that the doctrine of

res judicata be implimented to bring this case and this cause of action to an end.

Respectfully submitted,

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APPENDIX

IN THE
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

79 Misc. 64

In the Matter of the Suspected Contumacious Conduct of Clovis Carl Green, Jr.

ORDER

(Filed December 6, 1979)

In accordance with the Memorandum of this Court filed this date and incorporated herein,

IT IS HEREBY ORDERED that Inmate Green be and is DENIED leave to proceed in forma pauperis in the consolidated case, *Green v. White, et al.*, No. 79-1331 C (1); and

IT IS FURTHER ORDERED that the Clerks of the United States District Courts for the Eastern and Western Districts of Missouri shall not accept for filing any pleading, writ, petition, complaint or motion from Inmate Green without prepayment of the requisite filing fee; and

IT IS FURTHER ORDERED that the Clerks of the United States District Courts for the Eastern and Western Districts of Missouri shall return to Inmate Green any pleading, writ, petition, complaint or motion seeking leave to file and/or proceed in forma pauperis under 28 U.S.C. §1915, with the notation "applicable filing fee must be paid"; and

IT IS FURTHER ORDERED that the Clerks of the United States District Courts for the Eastern and West-

ern Districts of Missouri forthwith send Inmate Green the current schedule of filing fees; and

IT IS FURTHER ORDERED that Clovis Carl Green, Jr., be and is ENJOINED as follows:

> In any pleading, writ, petition, complaint or motion filed or attempted to be filed in a United States District Court subsequent to service of this Order, you are hereby ordered to verify all pleadings, writs, petitions, complaints or motions; to include in same a list of all pleadings, writs, petitions, complaints or motions ever filed on the same, similar or related cause of action; to include in same a statement referring to this Court's opinion, and to send a copy of same to the law clerk for the Chief Judge of the United States District Court for the Eastern District of Missouri.

Dated this 6th day of December, 1979.

/s/ H. Kenneth Wangelin
H. Kenneth Wangelin
United States District Judge

IN THE
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

79 Misc. 64

In the Matter of the Suspected Contumacious
Conduct of Clovis Carl Green, Jr.

MEMORANDUM

(Filed December 6, 1979)

This matter is before the Court upon the attempted filing of four purported civil rights complaints in forma pauperis by Inmate Green, and upon submission of the Order to Show Cause entered herein directing Inmate Green to show cause why he should not be held in contempt of court, and why he should not be permanently denied the ability to proceed in forma pauperis. The first complaint is entitled *Clovis Carl Green, Jr.*, Petitioner v. *The Circuit Court of Cole County and Honorable Elmo B. Hunter, U. S. Magistrate Richard Ralston, Honorable William Becker, Honorable Russell Clark, Honorable John Oliver, and all other Federal Judges and Magistrates, U. S. District Court for the Western District of Missouri,* Respondents. This complaint attempts to set forth two claims, namely, that Inmate Green has been denied access to the United States District Court for the Western District of Missouri in violation of what Inmate Green perceives as his First Amendment right to access to the Courts; and that the Circuit Court of Cole County is denying meaingful and effective access to the Courts to Inmate Green.

The second complaint is entitled *Clovis Carl Green, Jr.*, Plaintiff v. *Carl White, Superintendent, Missouri Training Center for Men and Missouri Board of Probation and Parole and David Blackwell, Director, Missouri Division of Corrections, and Mr. Sifford, Institutional Parole Officer and Donald W. Wyrick, Warden, and Judge Elmo B. Hunter, U. S. Magistrate Richard Ralston, Judge Russell Clark, Judge John Oliver, Judge William Collinson and all other U. S. District Court Judges, U. S. District Court, Kansas City, Missouri,* Defendants. In this case Inmate Green attempts to set forth claims including the failure of defendants Carl White and David Blackwell to provide free postage stamps for poor inmates for legal mail; that he was discriminatorily denied parole by defendants Carl White, David Blackwell, Donald Wyrick and the Missouri Board of Probation and Parole on account of religious prejudice; that §549.261 RSMo (1969) is unconstitutionally vague; that the Parole Board impermissibly considered a felony conviction in denying Inmate Green parole; that the rule violation reports against Inmate Green were unconstitutional; that a parole board cannot consider unconstitutional rule violation reports; and finally, another claim that Judge Hunter violated what Inmate Green perceives as his First Amendment Right to access to the Courts in *Clovis Carl Green, Jr. v. Donald Camper, et al.*, No. 79-4055-CV-C (W.D. Mo. filed August 16, 1979).

The third complaint is entitled *Rev. Clovis Carl Green, Jr., on behalf of himself and all other prisoners similarly situated,* Plaintiffs v. *David Dennis, Mr. Pitzen, Ms. Hufty, Ms. Lee, Major Morgan, Dr. W. H. McCormick, and Carl White, Superintendent, Missouri Training Center for Men,* Defendants. This voluminous and rambling complaint practically defies analyzation. However, Inmate Green's claims are apparently in the nature of a denial of his free-

dom of religious activity; cruel and inhumane living conditions violative of the Eighth Amendment; and a denial of access to the Courts.

The fourth complaint is entitled *Clovis Carl Green, Jr.*, Plaintiff v. *Phillip L. Swihart, Acting Clerk, U. S. District Court for the Eastern District of Missouri,* Defendant, which alleges a violation of meaningful access to the Courts.

Subsequent to the Show Cause Order entered in *In Re the Suspected Contumacious Activity of Clovis Carl Green, Jr.*, 79 Misc. 64 (E.D. Mo. filed Nov. 1, 1979), Inmate Green has sent in two additional civil rights complaints in his own name and one other in another prisoner's name.

With respect to at least the first three complaints, the Court notes that venue is improper in this District under 28 U.S.C. §1391(b) or (e). However, it is apparent in light of the decision in *Clovis Carl Green, Jr. v. Donald Camper, et al.*, No. 79-4055-CV-C (W.D. Mo. filed August 16, 1979) why Inmate Green has chosen to renew his litigatory onslaught in this District. Recognizing Inmate Green's unending propensity to file wholly meritless, frivolous and malicious actions in the Western District, in what the Court termed a "flagrant abuse of the judicial process" the United States District Court for the Western District of Missouri has taken steps to curtail Inmate Green's avowed purpose to "preempt so much judicial time at the trial and appellate levels as to thwart the very ability of the judicial system to carry out its necessary judicial function of properly processing its criminal and civil docket of cases filed by other litigants who may have meritorious matters", *See Green v. Camper, supra,* slip op. at 3 and 31-38. The Western District has, therefore, ordered that all suits filed by Inmate Green be immediately referred to a United States Magistrate for an initial determination of maliciousness or frivolousness. In this Court's opinion,

even such minimal consideration places too much faith in Inmate Green's intentions in light of his past actions. Such restrictions will not prevent Inmate Green from carrying forward his intentional abuse of judicial resources. The other five hundred frivolous and/or malicious cases filed by Inmate Green are set forth at *Green v. Camper, supra,* at 4-29. That number is continuously swelling. Inmate Green has been previously enjoined from acting as a "writ-writer" or "jailhouse lawyer" for any other inmate incarcerated within the Missouri penal system, or from filing in the United States District Court for the Western District of Missouri any action against the State of Missouri or any of its officials or employees, including the state judiciary, for any alleged cause of action arising out of other inmates' criminal convictions or their resultant confinement. *Green v. Wyrick,* 428 F.Supp. 732, 743-744 (W.D. Mo. 1976). Inmate Green has also been enjoined from filing any further lawsuits concerning the administration and operation of the United States District Court for the Western District of Missouri. *Green v. United States of America,* No. 76 CV-100-C (W.D. Mo. filed August 23, 1976). Neither injunction has deterred Inmate Green, and his deliberate violations of those injunctions have twice resulted in criminal convictions for contempt of court, *See In the Matter of the Alleged Contumacious Conduct of Clovis Carl Green, Jr.,* 586 F.2d 1247 (8th Cir. 1978) and *United States v. Clovis Carl Green, Jr.,* criminal action No. 79-04013-01-CR-W-4 (W.D. Mo. 1979). The first two complaints mentioned herein in all likelihood violate the second injunction referred to above, and the third complaint set forth above in all likelihood violates the first injunction mentioned above.

Inmate Green has also organized a prisoner's law collective whose purpose it is to flood the courts with frivolous suits, and has resorted to threats of violence if his demands

are not met. *Green v. Camper, supra.* Inmate Green has been found to have practiced fraud upon the court through the filing of false financial affidavits in connection with requests to proceed in forma pauperis. *Green v. Wyrick, supra.*

However, rather than engage in what would appear to be a meaningless act with respect to Inmate Green's avowed purpose to frustrate the judicial process, given the fact that he has been undeterred by his five month and ten year sentences for criminal contempt of court, this Court has decided to take a different course of action.

As has been stated by almost every court which has dealt with Inmate Green in the past several years, his abuse of the judicial process is so flagrant that it regularly preempts scarce and valuable judicial resources to the point that other litigants who may have meritorious matters suffer often protracted delay on account of Inmate Green's misdeeds.

In addition to the previously cited opinions of the Western District of Missouri, the state courts have characterized Inmate Green's filings as "a calculated abuse of process". *Clovis Carl Green, Jr. v. State of Missouri,* Civil Action No. 78,2824 (Mo. Cir. Ct., 16th Jud. District filed August 25, 1978).

The United States Court of Appeals has similarly characterized Inmate Green's filings. *In Re Clovis Carl Green, Jr., et al.,* Nos. 79-8075, 79-8078, 79-8079, 79-8081, 79-8089, 79-8091, 79-8092 (8th Cir., filed May 14, 1979). In that opinion, the Eighth Circuit ordered that in light of Inmate Green's continued abuse, Inmate Green would no longer be allowed to file writs of mandamus with the Eighth Circuit Court of Appeals, which challenged the regularity of proceedings in district court.

The courts of this society exist to protect the rights of individuals as well as the rights of society as a whole. The rights and obligations of the individual are not parallel to the rights and obligations of the collective. There is a constant tension between them and the borderline is penumbral. It is often the duty of the judiciary to balance those rights, to insure that the rights of the individual are protected vis-a-vis majoritarian demands, and to insure that society may limit the rights of individuals where such restrictions are fundamental to society's obligation to protect the legitimate rights and needs of the collective.

That the courts are charged with the task is ample proof that they must not be powerless to protect themselves from deliberate activity directed towards substantially impeding implementation of their duty.

One method by which society, through the mechanisms of both the legislative and judicial systems, imposes obligations on its individual members, is by setting forth and demanding adherence to prohibitory standards. Prosecution for criminal conduct and punishment therefore is one of the methods used to manifest, encourage and enforce an individual's obligation to society. This method has not been effective in impressing upon Inmate Green the concept that the rights of the individual are, in certain contexts, affected by the transcendent needs of the whole.

The amount of human and financial resources expended by the state and federal courts who have come within Inmate Green's orbit is a proud yet sorrowful display. It is proud in that it manifests extraordinary concern that even the boy who cried wolf hundreds of times too often has nonetheless had his cries underwritten by the United States Government. However, it is sorrowful that others must countenance arrogant maliciousness directed toward impeding an important societal institution. That

Inmate Green claims to be the founder of the "human awareness church" is pitifully ironic in light of his callous disregard for the rights of others' access to the Courts.

When an impecunious prisoner seeks to vindicate a claim of even doubtful validity, 28 U.S.C. §1915 has served a meaningful purpose to all society. "Civil Rights actions are of fundamental importance . . . in our constitutional scheme because they directly protect our most valued rights." *Johnson v. Avery*, 393 U.S. 483, 485 (1969). *Wolf v. McDonnell*, 418 U.S. 539, 579 (1974). When, however, §1915 is purposely used by a prisoner as a tool to frustrate the judicial function, the section in effect operates to perversely deny or impede those rights to all except those who abuse them, and a court should not sit idly by and allow it.

There can be no doubt that the section can be so used:

> . . . Persons proceeding in forma pauperis are immune from the imposition of costs if they are unsuccessful; and because of their poverty, they are practically immune from later tort actions for "malicious prosecution" or abuse of process. Thus indigents, unlike other litigants, approach the courts in a context where they have nothing to lose and everything to gain. The temptation to file complaints that contain facts which cannot be proven is obviously stronger in such a situation. For convicted prisoners with much idle time and free paper, ink, law books, and mailing privileges the temptation is especially strong. As Justice Rehnquist had noted, "Though [an inmate] may be denied legal relief, he will nonetheless have obtained a short sabbatical in the nearest federal courthouse". *Cruz v. Beto*, 405 U.S. 319, 327, 92 S.Ct. 1079, 1084, 31 L.Ed.2d 263 (1972) (dissenting).

Jones v. Bales, 58 F.R.D. 453, 463 (N.D.Ga. 1972).

With foresight which has proven correct, United States Circuit Judge Donald P. Lay, about three years and several hundred "Green" lawsuits ago, stated: "It is common sense that conscientious recognition of prisoner rights can continue only as long as the process is not abused by the prisoners to the extent that renders it meaningless. We are coming dangerously close to that time." *Green v. Garrott,* No. 76-8184 (8th Cir. November 2, 1976).

Undeterred by the expense non-pauper parties would have to bear in filing meritless claims, unafraid of perjuring himself to keep an obviously meritless claim alive, content to violate court orders with impunity despite two convictions for criminal contempt of court, Clovis Carl Green, Jr. has, with the aid of 28 U.S.C. §1915, continuously engaged in the grossest intentional abuse of the judicial process.

To prevent Inmate Green from filing or proceeding in forma pauperis in this or any future case in the Eastern or Western Districts of Missouri may ensure that Inmate Green files only those suits which he truly believes are justified. Such action will also force Inmate Green to make the initial judgment required of any potential litigant —is the possible benefit from the subject lawsuit worth the necessary expense? If Inmate Green continues to file frivolous and malicious lawsuits in furtherance of his "plan" or as a hobby, or to relieve the boredom of prison life, it will now at least become an expensive "plan" or hobby.

The purpose of §1915 is to provide access to a federal court for those persons economically unable to invoke its protection. There exists serious doubt as to whether Inmate Green is indeed a pauper. *See Green v. Wyrick,* 428 F.Supp. 732, 739, n. 12 (W.D. Mo. 1976). Further, the ability of an indigent to proceed in forma pauperis is a privilege and not a right. *Carter v. Thomas,* 527 F.2d 1332,

1333 (5th Cir. 1976); *Startti v. United States,* 415 F.2d 1115, 1116 (5th Cir. 1969); *Williams v. Field,* 394 F.2d 329, 332 (9th Cir. 1968), *cert. denied,* 393 U.S. 891 (1968); *See also Tyler v. Callahan,* 74 F.R.D. 421, 423 (E.D. Mo. 1977), *aff'd* 573 F.2d 1313 (8th Cir. 1978), *cert. denied,* 436 U.S. 947 (1978); *Ex parte Tyler,* 70 F.R.D. 456, 457 (E.D. Mo. 1976); *Rhodes v. Houston,* 258 F.Supp. 546, 578 (D. Neb. 1966), *aff'd* 418 F.2d 1309 (8th Cir. 1969), *cert. denied* 397 U.S. 1049 (1970). Furthermore, no one, rich or poor, has the right to abuse the judicial process. *Hardwick v. Brinson,* 523 F.2d 798, 800 (5th Cir. 1975); *Ex parte Tyler, supra,* at 457 and cases cited therein.

The right-privilege distinction has been criticized for its use in circumventing constitutional questions. *See van Alstyne, The Demise of the Right-Privilege Distinction in Constitutional Law,* 81 Harv.L.Rev. 1439 (1968). However, it is the opinion of this Court that even under the substantive principles of constitutional law which may arguably be applicable in denying Inmate Green the ability to proceed in forma pauperis, such action would be justified on the basis of Inmate Green's activities. It might be argued that an order preventing Inmate Green from filing lawsuits in forma pauperis would impact upon his right of access to the courts guaranteed under the Fourteenth Amendment to the United States Constitution.

The right of access to the courts is not explicit in the United States Constitution but had its genesis in the Supreme Court's Opinion in *Ex parte Hull,* 312 U.S. 546 (1941). In that case the Court held invalid a regulation requiring prisoners to submit to the legal investigator of the state parole board "all legal documents, briefs, petitions, motions, habeas corpus proceedings and appeals" which prisoners wished to file in court. *Id.* at 548-549. The predominate basis for the holding was the court's re-

fusal to allow a non-judicial officer to determine the merits of a petition for writ of habeas corpus.[1] Succeeding cases have enlarged the right. In *Griffin v. Illinois,* 351 U.S. 12 (1956), the court pursuant to the Due Process and Equal Protection Clauses required the states to provide trial transcripts or suitable substitutes for convicted, indigent defendants on appeal. Therein the concern of the court was assuring adequate appellate review for defendants regardless of their poverty.

In *Burns v. Ohio,* 360 U.S. 252 (1959), the court held that a state may not constitutionally require an indigent defendant in a criminal case to pay a filing fee before permitting him to file a motion for leave to appeal. While at first glance the case might appear to bring §1915 wholly within the purview of the right of access to the courts, the case is clearly concerned with the central core of the right, i.e., review of criminal convictions.

In *Smith v. Bennett,* 365 U.S. 708 (1961) the Court extended *Burns* by holding that when a state grants a right to collateral review it may not deny the right to an indigent simply because of an inability to pay the required filing fee. In *Douglas v. California,* 372 U.S. 353 (1963) the court reversed the conviction of two indigent defendants who had requested the assistance of counsel on appeal and were denied such representation in accordance with a California Rule of Criminal Procedure. The rule provided for discretionary appointment of counsel only after an independent investigation of the record by the appellate court determined that appointment would be helpful to the defendant or the court. Thus, the court held

1. Interestingly, there is no explicit reference to the Fourteenth Amendment in the opinion. The holding was, however, based upon two slightly dissimilar Fourteenth Amendment cases. *Erie R. Co. v. Purdy,* 185 U.S. 148, 152 (1902); *Carter v. Texas,* 177 U.S. 442, 447 (1900).

that the states must pay the costs in support of a defendant's right of appeal regardless its perceived merit. It should be noted that *Douglas* is confined to direct appellate review as of right of criminal convictions. Six years later, in *Johnson v. Avery, supra,* the Court held that unless the state provides some reasonable alternative to assist inmates in the preparation of petitions for post-conviction relief, the state may not validly enforce a regulation prohibiting prisoners from providing each other with assistance in preparing petitions to federal courts. It was in *Johnson* that the phrase "access to the courts" was coined within the quote "it is fundamental that access of prisoners to the court for the purpose of presenting their complaints may not be denied or obstructed." *Id.* at 485. It is apparent, however, that the "complaints" referred to in *Johnson* were writs of habeas corpus, as manifested by the court's insistence that "there is no higer duty than to maintain it (the Great Writ) unimpaired". *Id.* at 485. Two years later, in *Younger v. Gilmore,* 404 U.S. 15 (1971), the Court affirmed without opinion the judgment of the United States District Court of the Northern District of California, *Gilmore v. Lynch,* 319 F.Supp. 105 (N.D. Cal. 1970), which required that the state, in the absence of alternatives given to inmates, has an obligation to provide law libraries for prisoners in its custody. This case can be read as the first "break" from the traditional core of the right of access in that use of the law libraries was not exclusively confined to inmates seeking direct or collateral review of criminal convictions, although the district court emphasized the need for an expanded law library in order to file adequate petitions for relief by way of habeas corpus.

Thereafter, in *Wolff v. McDonnell, supra,* the court extended the prisoner's right of access to the courts to encompass civil rights actions under the Civil Rights Act of 1871, 42 U.S.C. §1981, *Id.,* at 577-580. However, it is

important to point out that the court did not suggest that the Constitution required that such actions be heard in the federal courts. See *Bounds v. Smith,* 430 U.S. 817, 833 (1977) (Powell, J., concurring). Nonetheless the holding in *Johnson, supra,* had clearly been extended beyond direct or collateral review of criminal convictions.

One of the holdings in *Procunier v. Martinez,* 416 U.S. 396 (1974) was that a state regulation restricting access to prisoners to members of the bar and licensed private investigators constituted an unjustifiable restriction on the right of access to the courts. *Id.* at 419. Using a balancing test, the court found that the legitimate interests in penal administration furthered by the regulation, even in light of the deference due prison officials in such a matter, were outweighed by the inmates' interests in presenting their claims. Again, the court was concerned with the absence of alternatives available to inmates. The court also stated that the regulation was arbitrary and not the least restrictive alternative available to further the prison administrators' interests in prison security.

In three subsequent decisions, *Ross v. Moffitt,* 417 U.S. 600 (1974); *United States v. MacCollum,* 426 U.S. 317 (1976); and *Stone v. Powell,* 428 U.S. 465 (1976), the Court began to define the boundaries of a prisoner's right of access to the courts. *Ross* held that the right of prisoners to an adequate opportunity to present their claims fairly did not require appointment of counsel to file petitions for discretionary review in state courts or in the federal courts, *Ross, supra,* at 615-617. The court in *MacCollum,* while noting that the basic question was one of adequacy of access to procedures for review of a conviction under *Ross v. Moffitt,* held that in a 28 U.S.C. §2255 proceeding where the defendant had chosen to forego his opportunity for direct appeal with its attendant unconditional free tran-

script, the restrictions imposed by 28 U.S.C. §753 on the availability to an indigent prisoner of a free trial transcript (a certification by the judge that the asserted claim is not frivolous and that the transcript is needed to decide the issue) were offensive neither to the Equal Protection Clause of the Fourteenth Amendment nor the counterpart Equal Protection requirement embodied in the Fifth Amendment. In *Stone* the court held that there was no broad federal constitutional right to collateral attack in federal court of convictions entered by a state court of competent jurisdiction. Finally, there is *Bounds v. Smith, supra.* To a certain extent *Bounds* is a reiteration of the holding in *Younger, supra.* In that case the court found the essential inquiry to be "whether law libraries or other forms of legal assistance are needed to give prisoners a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts." *Id.* at 825. The decision in *Bounds* did not foreclose alternative means to achieve the goal enunciated in *Younger,* but the court's avowed preference for the alternative of legal service plans is expressed in no uncertain terms. Nonetheless, it is apparent that under *Bounds* the states are not required to provide independent legal advisers for inmates in addition to library facilities.

Insofar as the court can determine, this is the entire background of principal Supreme Court cases dealing with the constitutional right of access to the courts. While it appears to this court that the ability to proceed in forma pauperis is bound-up with the right of access to the courts *where an indigent prisoner is appealing his conviction or collaterally attacking his conviction,* it is doubtful that the ability to proceed in forma pauperis is fundamentally connected with the right of access to the courts in the context of civil rights cases brought by indigent prisoners.

There are two further factors which lend support to this conclusion. No court has ever held that 28 U.S.C. §1915(d) is unconstitutional. Yet, there would be no apparent reason or justification for the provision in §1915(d) sanctioning disparate treatment by allowing the court to dismiss the case if it is satisfied that the action is frivolous or malicious before allowing the litigant to proceed, or at any time thereafter, if the ability to proceed in forma pauperis was inextricably tied to the right of access. Second, the waiver of costs in §1915(a) and (b) is statutory. In *Graham v. Riddle,* 554 F.2d 133 (4th Cir. 1977), the Fourth Circuit, in affirming the district court's order conditioning the plaintiff's right to file complaints in forma pauperis upon "good cause shown" stated:

> It is quite clear that Congress, while intending to extend to poor and meritorious suitors the privilege of having their wrongs redressed without the ordinary burdens of litigation, at the same time intended to safeguard members of the public against an abuse of the privilege by evil-minded persons who might avail themselves of the shield of immunity from costs for the purpose of harassing those with whom they were not in accord, by subjecting them to vexatious and frivolous legal proceedings.

554 F.2d at 134.

While the judiciary, not Congress, is the arbiter of the Constitution, this Court will not lightly imply a constitutional right where none exists under Supreme Court precedent and where Congress has made abundantly clear its intent not to underwrite frivolous or malicious lawsuits.

The Court recognizes that the *Gilmore, Procunier* and *Wolff* holdings extended the right of access to the courts in certain contexts to civil rights cases. Furthermore, the

court is aware of the statement in *Bounds* that "the costs of protecting a constitutional right cannot justify its total denial". It is, however, a quantum jump to wholly equate what has been delineated as the right of access to the courts with an absolute and inalienable right to proceed in forma pauperis under §1915. Nonetheless, this Court will undertake an analysis of the substantive constitutional issues arising from an order preventing Inmate Green from filing lawsuits in forma pauperis.

Despite the above analysis, it might be argued that such an order would impact upon Inmate Green's right of access to the courts. It should, however, be pointed out that besides this court's doubt as to whether a constitutional issue has been raised, there is further doubt even as to Inmate Green's status as a pauper, *Green v. Wyrick, supra.*

The fundamental constitutional rights involved in access to the courts emanate from the due process clauses of the Fifth and Fourteenth Amendments, and the Equal Protection Clause of the Fourteenth Amendment, made applicable to the federal government by means of "reverse incorporation" through the due process clause of the Fifth Amendment. To justify infringement of the right of access to the courts it would appear that constitutional scrutiny would require a finding that the infringement is necessary to further a compelling federal interest and is the least drastic means available to accomplish such interest.[2] Two other constitutional doctrines might conceivably be involved,[3] but would not appear to alter the

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2. See text accompanying nn. 5, 7, and 8, *infra,* and n. 7, *infra.*

3. This Court does not inevitably attempt to anticipate legal arguments which might conceivably apply to a case sub judice. Because Inmate Green has merely attempted to berate the Court in response to the Order to Show Cause, rather than address the legal issues herein, the Court feels that certain issues must be considered though not raised.

above test. It has been said that the constitutionality of laws (orders)[4] imposing a prior restraint is more suspect than that of laws providing for subsequent punishment. *Joseph Burstyn, Inc. v. Wilson,* 343 U.S. 495 (1952). Thus, Inmate Green has a constitutional right to proceed under §1915 by the section's inclusion in the right of access, a subsequent denial of that right for previous conduct ("publications") could be a prior restraint. Also, to the extent that the order would single out Inmate Green, it could be argued that it created a "suspect" classification within the meaning of the Equal Protection Clause.[5]

The doctrine of prior restraints is almost certainly inapplicable to this case.[6] Nonetheless this Court is of the firm conviction that Inmate Green's activities have brought him within the "exceptional case" language set forth in *Burstyn, supra,* at 504, citing *Near v. Minnesota,* 253 U.S. 697, 716 (1931). The compelling interest this Court has in protecting its ability to administer its own functions, which

4. In their ordinary usage, the First, Fifth and Fourteenth Amendments are limitations which apply to legislative or executive action. In that an injunctive order by a court can have similar impact, analysis of these limitations is deemed necessary by this Court.

5. The Equal Protection Clause of the Fourteenth Amendment applies only to the states and the Fifth Amendment does not contain an Equal Protection Clause. However, the concepts are not mutually exclusive. The Fifth Amendment does forbid discrimination that is so unjustifiable as to be violative of due process, *Schneider v. Rusk,* 377 U.S. 163, 168 (1964). Thus, if the classification would be invalid under the Equal Protection Clause of the Fourteenth Amendment, it could also be inconsistent with the due process requirement of the Fifth Amendment. Cf. *Richardson v. Belcher,* 404 U.S. 78, 81 (1971).

6. The continued filing of frivolous and malicious lawsuits is clearly outside the traditional framework of the doctrine of prior restraints, i.e., the historically conceived liberty of the press. *See Near v. Minnesota,* 283 U.S. 697, 713-716 (1931).

Furthermore, the operation of the order entered herein will not create the "dual punishment" problem associated with prior restraints in that the order barring waiver of fees is directed to the clerk. *See Near, supra,* at 713.

is itself a constitutional interest as evidenced by Article III of the United States Constitution, has been set forth at pages 6 and 7, *supra.* See *Shapiro v. Thompson,* 394 U.S. 618, 634 (1969).[7] Moreover, the order contemplated by this Court appears to be the least drastic alternative available to it. *See Shelton v. Tucker,* 364 U.S. 479, 489-490 (1960). The injunctions entered against Inmate Green and resultant criminal convictions for contempt of court (5 months, 10 years) have failed to deter Inmate Green. As set forth above, the status quo is injurious. Furthermore, it would appear that pursuing further criminal convictions against Inmate Green would be a more drastic alternative with respect to Inmate Green's liberty interests. The order entered by the United States District Court for the Western District of Missouri in *Green v. Camper, supra,* has only resulted in Inmate Green pursuing his litigatory deluge in this Court.

The test for "suspect" classifications appears to be identical and scrutiny thereunder would yield the same result as the "prior restraint" analysis above.[8] Inmate Green's abuse has been so consistent, flagrant and malicious that it appears to this Court the only viable alternative is to remove Inmate Green's major weapon. To that end,

7. It is clear that the above test does not apply to all constitutional limitations. For instance, the substantive tests for determining that certain speech is without First Amendment protection, i.e., clear and present danger, libel, obscenity, fighting words, etc., are divergent from the "compelling state interest" test, *supra,* unless protection from clear and present danger, libel, obscenity, etc., are definitive restatements of valid compelling state interests and unless denying protection to speech is invariably the least drastic alternative. However, as distinguished from First Amendment speech, prior restraints limited by the First Amendment are scrutinized under a test which appears to be similar to the "compelling state interest" test, *supra. See Nebraska Press Assn. v. Stuart,* 427 U.S. 539, 562-570 (1976); *Near v. Minnesota,* 283 U.S. 697, 716 (1931).

8. *See e.g., Graham v. Richardson,* 403 U.S. 365, 375-376 (1971).

this Court will enter an order pursuant to 28 U.S.C. §1651(a) directing the clerks of the United States District Courts for the Eastern and Western District of Missouri not to accept for filing any writ, petition, complaint or motion from Inmate Green without prepayment of the requisite filing fee, and to return to Inmate Green any writ, petition, complaint or motion seeking leave to file and/or proceed in forma pauperis under 28 U.S.C. §1915, with the notation "applicable filing fee must be paid", and to send to Inmate Green the current schedule of filing fees of this Court; and will further order Inmate Green to verify all pleadings, writs, petitions, complaints or motions ever submitted for filing to a United States District Court; to include in every writ, petition, complaint or motion filed, a list of all causes previously filed on the same, similar or related cause of action; to include in every writ, petition, complaint or motion a statement referring to this Court's opinion; and to send a copy of every writ, petition, complaint or motion filed in any federal court to the law clerk for the Chief Judge of the United States District Court for the Eastern District of Missouri, *see Carter v. Telectron, Inc.*, 452 F.Supp. 944, 1003 (S.D. Tex., 1976).

This order does not affect in any way injunctions previously entered against Clovis Carl Green, Jr.

Dated this 6th day of December, 1979.

/s/ H. Kenneth Wangelin
H. Kenneth Wangelin
United States District Judge